

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

HEARING DATES: April 24 and 26, 2002

**SUBJECT MATTER OF
PROPOSED REGULATIONS:** Consumer Assistance Program: State Assistance
Limits; Income Eligible Repair Assistance
Qualifications; Consumer Assistance Program
Application (CAP/APP 11/01).

SECTIONS AFFECTED: §§ 3394.3, 3394.4, 3394.6 of Title 16, Division 33,
Chapter 1, Article 11, of the California Code of
Regulations.

SPECIFIC PURPOSE OF REGULATORY PROPOSAL:

1. State Assistance Limits:

The intent of this proposed action is to continue the operation of CAP in order to help California meet vehicle emissions reductions committed to in the SIP and to meet federal Clean Air Act requirements.

2. Deletion of Incorrect Cross-reference:

The intent of this proposed action is to delete an erroneous section cross-reference in Section 3394.4.

3. Income Eligible Repair Assistance Qualifications:

The intent of this proposed action is to inform potential applicants for the Income Eligible Repair Assistance option of as many qualifying benefit and/or public assistance programs as possible.

4. Consumer Assistance Program Application (CAP/APP 01/02):

The intent of this proposed action is: (1) to make the CAP/APP as clear and self-explanatory as possible; (2) to revise the Income Eligibility Table based on the 2002 Federal Poverty Guidelines published February 14, 2002 by the Department of Health and Human Services (*Federal Register* Vol. 67, No. 31, Feb. 14, 2002, pp. 6931-6933);

and, (3) to incorporate by reference the current revision of the application form (CAP/APP (01/02)).

FACTUAL BASIS

Background:

As amended in 1990, the federal Clean Air Act requires states to develop an enhanced vehicle inspection and maintenance (I/M) program (“Smog Check”) to reduce ozone pollution. In 1994, the California Legislature passed and the Governor approved major legislation intended to fulfill the enhanced I/M program requirements for ozone attainment. Because of its clean air benefits, the Enhanced Smog Check Program has a primary goal to identify vehicles that emit inordinate amounts of pollution for their make, model, and year, and to ensure their immediate repair or removal (retirement) from service. In 1995, the SIP was amended to include revised vehicle emissions reduction goals to be accomplished by February 2000.

Concerned about the possible ramifications of such strict requirements on low-income motorists, the Legislature enacted Senate Bill 198 as part of the original Enhanced Smog Check Program. Senate Bill 198 (Chapter 28, Statutes of 1994) established both repair assistance and vehicle retirement options for owners of high-polluting vehicles. To fund these programs, the DCA gave new car owners the option to contribute \$39 to the DCA/BAR to skip the first required Smog Check inspection on their vehicle. However, neither of these programs became fully operational because motorist contributions were significantly less than projected.

On October 8, 1997, the Governor signed Assembly Bill 57 (Chapter 804, Statutes of 1997), Assembly Bill 1492 (Chapter 803, Statutes of 1997), and Assembly Bill 208 (Chapter 802, Statutes of 1997), which mandated several consumer options in the Enhanced Smog Check Program, including greater emphasis on the implementation of Low-Income Repair Assistance and Vehicle Retirement Programs. It also called for a new funding source for these programs, the \$300 Smog Impact Fee charged on out-of-state vehicles being initially registered in California, and repealed the \$39 “Skip Your First Smog Check” funding source described above. As a result, once the DCA/BAR implemented the Enhanced Smog Check Program in 1998, the options initially available to California motor vehicle owners whose vehicles failed their required biennial (every other year) Smog Check inspections were:

- a. Spend a minimum of \$450 on needed emissions-related repairs before being granted a two-year “repair cost waiver” from further repairs;
- b. Qualify as low-income and spend no more than \$250 on emissions-related repairs before being granted a two-year “economic hardship extension” from further repairs;

- c. Qualify as low-income and contribute a minimum co-payment of \$250, as initially established in regulation, in order to receive state funded repair assistance of up to \$450;
- d. Voluntarily retire the vehicle for an amount determined by the DCA, which was initially established in regulation at \$450;
- e. Trade in the vehicle to a licensed motor vehicle dealer (private party sales require a Smog Check Certificate of Compliance); or
- f. Do not renew registration as an operational vehicle.

California must demonstrate due diligence in meeting the requirements of the federal Clean Air Act and its commitment in the SIP in order to eliminate the potential for federal sanctions and third party lawsuits for non-compliance with clean air goals by February 2000. DCA/BAR's Repair Assistance options were developed and implemented after the SIP goals for California were established. However, the Repair Assistance options already realize substantial emission reductions. The emissions reductions identified will be counted toward the air quality benefits realized by the Smog Check Program to help meet the SIP goal for emissions reductions in California.

On July 6, 1999, the Governor signed Assembly Bill 1105 (Chapter 67, Statutes of 1999), a trailer bill to the 1999 Budget Act, which took effect immediately upon the Governor's signature. Provisions in Assembly Bill 1105 either require or provide DCA/BAR with the discretion to make the following changes to the repair assistance option of the CAP:

- a. Lower the poverty threshold for income-based eligibility (required);
- b. Provide eligibility for Test-Only directed vehicle owners (required);
- c. Increase the amount paid by the state to assist in the repair of a vehicle (discretionary); and
- d. Modify the co-payment required of vehicle owners (discretionary).

Because these Repair Assistance changes were included in a budget trailer bill, as opposed to the usual process of bill enactment, it appears that the intent of the Legislature was to implement the provisions of Assembly Bill 1105 immediately.

However, DCA/BAR delayed implementation of these items pending the Third District Court of Appeal's review of the constitutionality of the Smog Impact Fee, CAP's primary funding source. In October 1999, the court ruled the fee unconstitutional, which triggered immediate collection by the Department of Motor Vehicles (DMV) of an alternative funding source, a \$2 increase in the Smog Abatement Fee charged on vehicles four model-years old and newer that are exempted from the biennial testing requirements of the Smog Check Program.

On July 12, 2000, the California Air Resources Board (ARB) released a report on the effectiveness of the Smog Check Program (Program). ARB's report indicates that while the current Program is reducing a significant amount of motor vehicle emissions, improvements to the Program must be made if California is to meet federal air quality standards. For example, California's 1994 State Implementation Plan - the blueprint submitted to the United States Environmental Protection Agency (USEPA) that explains how the state will achieve compliance - claimed an emissions reduction of 112 tons per day (tpd) for the Program. After careful analysis, the emissions reductions associated with the current Program were closer to 65 tpd.

From many perspectives, achieving compliance with the federal air quality standards is vitally important to California. The federal government may withhold highway trust funds or impose other sanctions on the state, including the implementation of a federally designed motor vehicle inspection and maintenance program. Noncompliance has already triggered a third-party lawsuit against local metropolitan planning agencies. These agencies rely on the emission reductions of the Program to acquire approval and federal funding for transportation improvement projects.

While these economic concerns are important, improving the air quality is essential to the health of all Californians. Senior citizens, the infirm, and children are at greatest risk from poor air quality. The USEPA estimates that between five and twenty percent of the population is especially susceptible to the effects of ozone, an airborne chemical that reacts in chemically adverse ways on internal body tissues.

In a joint letter to the USEPA explaining how the shortfall could be eliminated, the ARB and the BAR asserted that near-term improvements to the Program would result in a statewide emission reduction of almost 14 tpd by 2002. By 2005, the benefit increases to almost 22 tpd, and in 2008, the benefit reaches its maximum projected value of 24.1 tpd. The proposed improvements include: more stringent emission cutpoints, loaded-mode testing for heavy-duty trucks, a remote sensing component, improved evaporative testing, and more vehicles directed to test-only stations.

Purpose of the Regulations:

1. State Assistance Limits:

The proposed changes to the state assistance limits of CAP are necessary to continue the operation of CAP, albeit at a somewhat reduced level, in order to help California meet vehicle emissions reductions committed to in the SIP and to meet federal Clean Air Act requirements. Given the present fiscal forecast for the state and the CAP, it is possible that this important program may have to be temporarily or even indefinitely suspended if these proposed changes are not made.

Since the inception of the CAP, consumer interest in the program in general and participation in the vehicle retirement option in particular, has exceeded projected levels. In fact, last fiscal year, BAR submitted a Budget Revision to increase its expenditure

authority in the vehicle retirement option from \$15.0 million to \$21.5 million to meet consumer demand. Even with this Budget Revision, BAR could not immediately assist all consumers seeking to retire their vehicles without exceeding its appropriation. This fiscal year, consumer interest in the CAP remains strong, and BAR projects incurring \$43.6 million in total expenditures. Currently, BAR retires approximately 2,400 vehicles each month. At this rate, BAR projects disbursing at least \$26.0 million to consumers retiring their vehicles in this fiscal year, with the remainder (\$17.6 million) to be used for repair assistance and administration. However, the Governor's Budget proposes to transfer \$44 million from the High Polluter Repair or Removal Account (HPRRA) - which is the account that supports the CAP - to the General Fund to help reduce that fund's anticipated deficit. If this proposed transfer is ratified by the Legislature, BAR will have to rely on the estimated \$22.5 million in annual revenue to fund the continued operation of the CAP at some reduced level.

In order to help the CAP continue to operate at the highest level possible under the previously unanticipated fiscal circumstances, it will be necessary to reduce the amount of assistance that is provided to consumers in vehicle retirement. In order to advance that purpose, this action will provide the flexibility to reduce the maximum amount payable for retirement of a vehicle from one thousand dollars (\$1,000) to an appropriate amount based on the availability of resources and the projected volume of retired vehicles. This could save approximately \$6.7 million in the remainder of the current fiscal year and \$13.5 million in the budget year. In addition, BAR will pursue loans from other funds, such as the Vehicle Inspection and Repair Fund (VIRF) to make up any additional shortfall in the current fiscal year.

In addition to providing assistance to low income consumers, the CAP is responsible for significant emissions reductions and contributes directly to the overall effectiveness of the Smog Check Program. For example, in fiscal year 2000/2001, a total of 19,242 high polluting vehicles were retired resulting in emissions reductions of approximately 18 tons per day (tpd); another 11,762 vehicles were repaired resulting in emissions reductions of approximately 4 tpd. In the first half of the current fiscal year 10,523 vehicles have been retired and 9,477 vehicles have been repaired for emissions reductions of approximately 10 tpd and 4 tpd respectively.

Any reduction in the level of operation of the CAP will not only impact important services to consumers, but will negatively affect the improvements in emissions reductions necessary to comply with the federal Clean Air Act. The additional emissions reductions anticipated from the Program improvements committed to by the ARB and the BAR will be negated by any cut backs in the operation of the CAP. This action is necessary to enable the CAP to continue serving as many consumers as possible, and to generate the highest level of emissions reductions possible within the limits of available resources.

Vehicle emissions significantly affect air quality. Every part of the Smog Check Program (Program) is essential to help decrease air pollution, increase air quality in California, and meet stringent timelines set forth in the California State Implementation Plan (SIP) to

comply with the federal Clean Air Act. The Consumer Assistance Program (CAP) is a critical and vital component of the Program.

The Repair Assistance options of CAP provide immediate and quantifiable results in improving air quality and mitigating the risk of vehicle owners driving unregistered vehicles. Registered vehicle owners are offered an alternative to illegally operating an unregistered or polluting vehicle by receiving state assistance for the repair of a high-polluting vehicle.

The Repair Assistance options objectives are:

- a. To assist the state in meeting the required emission reductions under the United States Environmental Protection Agency (USEPA) mandated SIP and to be in compliance with the federal Clean Air Act; and,
- b. To provide qualifying California vehicle owners with financial assistance to repair vehicles that fail biennial Smog Check inspections.

2. Deletion of Incorrect Cross-reference:

The intent of the proposed action is to remove the erroneous reference in Section 3394.4 to Section 3340.5. This action will have no regulatory effect.

In order to be eligible for participation in the Consumer Assistance Program, a vehicle must be subject to Smog Check Program (Program). Health and Safety Code section 44011 specifies which vehicles are subject to the Program and which vehicles are exempt. Section 3340.5 of the California Code of Regulations exempts additional vehicles from the Program. Section 3394.4 of the California Code of Regulations references both Section 44011 (H & S Code) and Section 3340.5 (CCR) as determining which vehicles are required biennially to obtain a certificate of compliance. The reference to Section 3340.5 appears to be erroneous, as that section only provides *exemption* to certain vehicles.

3. Income Eligible Repair Assistance Qualifications:

The intent of the proposed action is to inform potential applicants for the Income Eligible Repair Assistance option of as many qualifying benefit and/or public assistance programs as possible. This action will have no regulatory effect.

There are a number of benefit and/or public assistance programs that can be used to qualify for the Income Eligible Repair Assistance option of the CAP. One such program that is accepted by CAP is the California Work Opportunity and Responsibility to Kids (CalWORKs) program. CalWORKs is similar to or the equivalent of the federal government's Temporary Assistance for Needy Families (TANF) program. However, because this program is not specifically identified in regulation and is not mentioned in the CAP application itself, many potential applicants who would otherwise qualify

because they are CalWORKs recipients, do not submit applications. It appears that they do not think they are eligible for this CAP option because CalWORKs is not specifically identified as a qualifying benefit program. Adding CalWORKs to this section and to the application will provide clarification for applicants. This change has no regulatory effect since the CAP under the broad authority of Section 3394.6(b)(2)(F) accepts CalWORKS as a qualifying benefit – “Other documentation satisfactory to the Department.” Whether CalWORKS is specifically included in Section 3394.6(b)(2)(A) and the application form or not, the CAP can and does, accept this program as qualifying.

4. Consumer Assistance Program Application (CAP/APP 01/02):

The intent of the proposed action is to make the CAP/APP as clear and self-explanatory as possible. This action will have no regulatory effect.

Pursuant to CCR § 3394.4(a)(2)(A), income eligibility for the Consumer Assistance Program (CAP) is based on the Federal Poverty Guidelines. In February each year, the U.S. Department of Health and Human Services (DHHS) releases an official income level for poverty called the Federal Poverty Guidelines. CAP income eligibility is set at 185% of the applicable Federal Poverty Guideline. The income eligibility table is included in the CAP application as a convenience to applicants in determining their eligibility as to income. Since the income levels are adjusted annually by DHHS, the application table must be adjusted accordingly in order to remain accurate and not mislead applicants. CCR § 3394.4(a)(2)(A) clearly contemplates adjustments in the Federal Poverty Guidelines and establishes eligibility based on the published amounts. The revised amounts included in the new table are applicable under the provisions of CCR § 3394.4(a)(2)(A), even if they are not included in the application form. Therefore, this particular change has no regulatory effect.

CAP is a fairly new and dynamic program and the staff is continually striving to improve and streamline processes. One focus of these efforts is the application form. The clearer and more consistent the application is, the easier it is for applicants to complete it properly. In addition to changes in the application that conform to the above-described proposed actions, other technical, grammatical and editorial changes are being proposed to clarify and simplify the application. Therefore, it is necessary to update the reference in this section to the revision date of the form that is incorporated therein.

Underlying Data:

2002 Federal Poverty Guidelines published February 14, 2002 by the Department of Health and Human Services (*Federal Register* Vol. 67, No. 31, Feb. 14, 2002, pp. 6931-6933)

Business Impact:

These regulations will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment:

These regulations do not mandate the use of specific technologies or equipment.

Consideration or Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

No reasonable alternative has been considered or identified.